

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GER VANG,

Defendant-Appellee.

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UNPUBLISHED

December 13, 2005

No. 264317

Oakland Circuit Court

LC No. 04-199828-FH

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

The prosecution appeals by leave granted an order of the trial court granting defendant's motion to suppress a statement he made to a police officer in a school office. The trial court found defendant was subjected to custodial interrogation. We reverse.

This Court reviews de novo a trial court's decision that a defendant was in custody for *Miranda* purposes. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). "The right against self-incrimination is guaranteed by both the United States and Michigan Constitutions." *People v Mayes (After Remand)*, 202 Mich App 181, 189; 508 NW2d 161 (1993), citing US Const, Am V; Const 1963, art 1, § 17. "Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). *Miranda* warnings "are required when a person is in custody or otherwise deprived of freedom of action in any significant manner." *People v Roark*, 214 Mich App 421, 423; 543 NW2d 23 (1995). To determine whether a defendant was in custody at the time of the interrogation, this Court looks to the totality of the circumstances, "with the key question being whether the accused reasonably could have believed that he was not free to leave." *Id.*

In *Mayes (After Remand)*, *supra*, this Court considered the right against self-incrimination of a student summoned for police questioning in school in the context of a challenge for ineffective assistance of counsel. The police officer greeted the high school senior, frisked him for weapons, and then asked him if he brought a gun to school. The officer confronted the student with the student's alleged weapon and the student admitted that it was his. The officer testified that the student was free to leave at any time but that this message was never communicated to the student. This Court noted that no one told the student he was under arrest, he left the principal's office freely after questioning, and the encounter with the police officer

was “brief.” This Court held that the student’s challenge for ineffective assistance of counsel lacked merit because it was unclear whether he would have prevailed on the question whether he was in custody. *Mayes*, 202 Mich App at 190-191.

The facts of this case weigh against suppressing defendant’s statement. Defendant, a 17-year-old at the time, was questioned for about an hour in a room in his high school, not in an adversarial police station setting. Officer Scott Edwards met alone with defendant and was unarmed and not in uniform. Defendant, at the outset, agreed to speak to Edwards. Defendant was not physically restrained and he sat freely in a chair next to the unlocked door. The fact that someone entered the office at least once to retrieve something indicates that the setting was not police dominated because Edwards did not control the environment. The record did not indicate that school personnel told defendant he had to meet with Edwards and answer questions. Edwards never told defendant that he was under arrest or otherwise not free to leave. Defendant did not ask to leave, nor did Edwards tell defendant he did not have to answer questions. While Edwards did collect a DNA sample, he did so at the end of the interview and with defendant’s permission.

There was no evidence that defendant suffered from deprivation of food, sleep, or any other ailment that would call into question the voluntariness of his statement. Finally, the recorded transcript of the interview does not reveal that Edwards threatened defendant or made any promises in return for information.

Under these circumstances, the trial court erred when it found that, for purposes of *Miranda*, defendant was in custody. A reasonable person in defendant’s situation would not have believed he was not free to leave. Because defendant was not in custody, Edwards acted within the confines of the law when he questioned defendant without advising him of his *Miranda* rights. Any statements defendant made were voluntary and not subject to suppression for failure to receive *Miranda* warnings.

Reversed.

/s/ Helene N. White

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder